

## **Assembly Bill No. 2693**

### **CHAPTER 940**

An act to amend Section 10176 of, and to add Section 10131.8 to, the Business and Professions Code, to amend Section 1916.5 of the Civil Code, to add Section 22317.5 to the Financial Code, and to amend Section 677 of the Insurance Code, relating to lending.

[Approved by Governor September 29, 2004. Filed  
with Secretary of State September 30, 2004.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

**AB 2693, Wiggins. Lending.**

Under existing law, real estate licensees are licensed and regulated by the Real Estate Commissioner and finance lenders and brokers are licensed and regulated by the Commissioner of Corporations.

This bill would prohibit real estate licensees and licensed finance lenders and brokers from failing to disburse funds in accordance with a commitment to make a loan, or intentionally delaying the closing of a loan for the purpose of increasing specified costs to the borrower.

Existing law defines a real estate broker as a person who, among other things, solicits borrowers or lenders for or negotiates loans or collects payments or performs other services for borrowers or lenders or note owners in connection with loans secured directly or collaterally by liens on real property or on a business opportunity.

This bill would require a real estate broker engaging in these activities who meets certain criteria to annually notify the Department of Real Estate in writing.

Existing law requires a lender to set forth provisions for variable interest rates in security documents and any evidence of the debt that are issued in this connection and to include specified provisions in these documents regarding variable interest rates. Existing law exempts supervised financial organizations from these requirements, and defines this term to include various entities, including state or federally regulated banks, savings associations, savings banks, or credit unions.

This bill would revise this definition to also exempt licensed finance lenders and licensed residential mortgage lenders.

Existing law sets forth the process for cancellation of a policy of insurance and requires a notice of cancellation to be in writing and to identify the grounds for cancellation.

This bill would provide that a lienholder's copy of this notice shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

Because a willful violation of the bill relating to real estate licensees and finance lenders and brokers would be a misdemeanor, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

*The people of the State of California do enact as follows:*

SECTION 1. Section 10131.8 is added to the Business and Professions Code, to read:

10131.8. (a) A real estate broker who acts pursuant to subdivision (d) of Section 10131 and who meets all of the following requirements shall notify the department annually in writing on a form that is acceptable to the commissioner:

(1) The real estate broker is an approved lender for the Federal Housing Administration, Veterans Administration, Farmers Home Administration, Government National Mortgage Association, Federal National Mortgage Administration, or the Federal Home Loan Mortgage Corporation.

(2) The real estate broker makes residential mortgage loans to a loan applicant for a residential mortgage loan by using or advancing the broker's own funds, or by making a commitment to advance the broker's own funds.

(3) The real estate broker makes the credit decision in the loan transaction.

(4) The real estate broker at all times maintains a tangible net worth, computed in accordance with generally accepted accounting standards, of a minimum of two hundred fifty thousand dollars (\$250,000).

(b) As used in paragraph (2) of subdivision (a), "own funds" means (1) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the real estate broker's financial statements, whether secured or unsecured, or (2) cash, corporate capital, or warehouse credit lines at commercial banks, savings banks, savings and loan associations, industrial loan companies, or other sources that are liability items on the financial statements of an



affiliate of the real estate broker, whether secured or unsecured. “Own funds” does not include funds provided by a third party to fund a loan on condition that the third party will subsequently purchase or accept an assignment of the loan.

SEC. 2. Section 10176 of the Business and Professions Code is amended to read:

10176. The commissioner may, upon his or her own motion, and shall, upon the verified complaint in writing of any person, investigate the actions of any person engaged in the business or acting in the capacity of a real estate licensee within this state, and he or she may temporarily suspend or permanently revoke a real estate license at any time where the licensee, while a real estate licensee, in performing or attempting to perform any of the acts within the scope of this chapter has been guilty of any of the following:

- (a) Making any substantial misrepresentation.
- (b) Making any false promises of a character likely to influence, persuade or induce.
- (c) A continued and flagrant course of misrepresentation or making of false promises through real estate agents or salespersons.
- (d) Acting for more than one party in a transaction without the knowledge or consent of all parties thereto.
- (e) Commingling with his or her own money or property the money or other property of others which is received and held by him or her.
- (f) Claiming, demanding, or receiving a fee, compensation or commission under any exclusive agreement authorizing or employing a licensee to perform any acts set forth in Section 10131 for compensation or commission where the agreement does not contain a definite, specified date of final and complete termination.
- (g) The claiming or taking by a licensee of any secret or undisclosed amount of compensation, commission or profit or the failure of a licensee to reveal to the employer of the licensee the full amount of the licensee’s compensation, commission or profit under any agreement authorizing or employing the licensee to do any acts for which a license is required under this chapter for compensation or commission prior to or coincident with the signing of an agreement evidencing the meeting of the minds of the contracting parties, regardless of the form of the agreement, whether evidenced by documents in an escrow or by any other or different procedure.
- (h) The use by a licensee of any provision allowing the licensee an option to purchase in an agreement authorizing or employing the licensee to sell, buy, or exchange real estate or a business opportunity for compensation or commission, except when the licensee prior to or coincident with election to exercise the option to purchase reveals in



writing to the employer the full amount of licensee's profit and obtains the written consent of the employer approving the amount of the profit.

(i) Any other conduct, whether of the same or a different character than specified in this section, which constitutes fraud or dishonest dealing.

(j) Obtaining the signature of a prospective purchaser to an agreement which provides that the prospective purchaser shall either transact the purchasing, leasing, renting or exchanging of a business opportunity property through the broker obtaining the signature, or pay a compensation to the broker if the property is purchased, leased, rented or exchanged without the broker first having obtained the written authorization of the owner of the property concerned to offer the property for sale, lease, exchange or rent.

(k) Failing to disburse funds in accordance with a commitment to make a mortgage loan that is accepted by the applicant when the real estate broker represents to the applicant that the broker is either of the following:

(1) The lender.

(2) Authorized to issue the commitment on behalf of the lender or lenders in the mortgage loan transaction.

(l) Intentionally delaying the closing of a mortgage loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

SEC. 3. Section 1916.5 of the Civil Code is amended to read:

1916.5. (a) No increase in interest provided for in any provision for a variable interest rate contained in a security document, or evidence of debt issued in connection therewith, by a lender other than a supervised financial organization is valid unless that provision is set forth in the security document, and in any evidence of debt issued in connection therewith, and the document or documents contain the following provisions:

(1) A requirement that when an increase in the interest rate is required or permitted by a movement in a particular direction of a prescribed standard an identical decrease is required in the interest rate by a movement in the opposite direction of the prescribed standard.

(2) The rate of interest shall not change more often than once during any semiannual period, and at least six months shall elapse between any two changes.

(3) The change in the interest rate shall not exceed one-fourth of 1 percent in any semiannual period, and shall not result in a rate more than 2.5 percentage points greater than the rate for the first loan payment due after the closing of the loan.



(4) The rate of interest shall not change during the first semiannual period.

(5) The borrower is permitted to prepay the loan in whole or in part without a prepayment charge within 90 days of notification of any increase in the rate of interest.

(6) A statement attached to the security document and to any evidence of debt issued in connection therewith printed or written in a size equal to at least 10-point boldface type, consisting of the following language:

**NOTICE TO BORROWER: THIS DOCUMENT CONTAINS PROVISIONS FOR A VARIABLE INTEREST RATE.**

(b) (1) This section shall be applicable only to a mortgage contract, deed of trust, real estate sales contract, or any note or negotiable instrument issued in connection therewith, when its purpose is to finance the purchase or construction of real property containing four or fewer residential units or on which four or fewer residential units are to be constructed.

(2) This section does not apply to unamortized construction loans with an original term of two years or less or to loans made for the purpose of the purchase or construction of improvements to existing residential dwellings.

(c) Regulations setting forth the prescribed standard upon which variations in the interest rate shall be based may be adopted by the Commissioner of Financial Institutions with respect to savings associations and by the Insurance Commissioner with respect to insurers. Regulations adopted by the Commissioner of Financial Institutions shall apply to all loans made by savings associations pursuant to this section prior to January 1, 1990.

(d) As used in this section:

(1) “Supervised financial organization” means a state or federally regulated bank, savings association, savings bank, or credit union, or state regulated industrial loan company, a licensed finance lender under the California Finance Lenders Law, a licensed residential mortgage lender under the California Residential Mortgage Lending Act, or holding company, affiliate, or subsidiary thereof, or institution of the Farm Credit System, as specified in 12 U.S.C. Sec. 2002.

(2) “Insurer” includes, but is not limited to, a nonadmitted insurance company.

(3) “Semiannual period” means each of the successive periods of six calendar months commencing with the first day of the calendar month in which the instrument creating the obligation is dated.

(4) “Security document” means a mortgage contract, deed of trust, or real estate sales contract.

(5) “Evidence of debt” means a note or negotiable instrument.



(e) This section is applicable only to instruments executed on and after the effective date of this section.

(f) This section does not apply to nonprofit public corporations.

(g) This section is not intended to apply to a loan made where the rate of interest provided for is less than the then current market rate for a similar loan in order to accommodate the borrower because of a special relationship, including, but not limited to, an employment or business relationship, of the borrower with the lender or with a customer of the lender and the sole increase in interest provided for with respect to the loan will result only by reason of the termination of that relationship or upon the sale, deed, or transfer of the property securing the loan to a person not having that relationship.

SEC. 4. Section 22317.5 is added to the Financial Code, to read:

22317.5. On any loan secured by real property, a licensee may not do either of the following:

(a) Fail to disburse funds in accordance with a commitment to make a loan that is accepted by the applicant.

(b) Intentionally delay the closing of a loan for the sole purpose of increasing interest, costs, fees, or charges payable by the borrower.

SEC. 5. Section 677 of the Insurance Code is amended to read:

677. (a) All notices of cancellation shall be in writing, mailed to the named insured at the address shown in the policy, or to his or her last known address, and shall state, with respect to policies in effect after the time limits specified in Section 676, (1) which of the grounds set forth in Section 676 is relied upon, and (2) that, upon written request of the named insured, mailed or delivered to the insurer within 15 days of the date of cancellation, the insurer shall specify the reason for the cancellation except where the reason is for nonpayment of premium and is so stated in the cancellation notice.

(b) For purposes of this section, a lienholder's copy of those notices shall be deemed mailed if, with the lienholder's consent, it is delivered by electronic transmittal, facsimile, or personal delivery.

SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

